

JAMES M. CHUDNOW

IBLA 82-307

Decided February 23, 1982

Appeal from the decision of the Wyoming State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas leases W-52589 and W-55739 and declaring the leases automatically terminated for failure to pay the annual rental timely.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases:  
Termination

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

2. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases:  
Termination

Reasonable diligence ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Mailing a rental payment after it is due does not constitute reasonable diligence.

3. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases:  
Termination

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Neither ignorance of the law nor a business or pleasure trip justifies late payment.

APPEARANCES: James M. Chudnow, pro se.

# OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

James M. Chudnow has appealed the decision of the Wyoming State Office, Bureau of Land Management (BLM), dated December 14, 1981, denying his petition for reinstatement of oil and gas leases W-52589 and W-55739 and declaring the leases automatically terminated for failure to pay the annual rental due on December 1, 1981.

BLM received appellant's rental payments, which were postmarked December 4, 1981, on December 9, 1981. In an accompanying letter appellant explained that he had gone to Europe on business at the end of October and did not return until December 1. He noted that he had informed BLM that he would be away and asked BLM to hold his mail. He reported that he found the BLM rental payment courtesy notices in his mail when he picked it up at the post office on December 2.

The BLM decision recites that a lessee is entitled to reinstatement of a lease if it is shown that reasonable diligence was exercised in mailing the payment or that delay in remitting the rental is justifiable. After noting that reasonable diligence generally requires sending a payment sufficiently in advance of the due date to account for normal delays in mail delivery, BLM ruled that to attempt to "hold" appellant's mail would have been an undue burden on itself, that reliance on a courtesy notice does not excuse a failure to exercise due diligence, and that appellant's absence on a business trip does not justify a failure to pay timely the rentals.

In his statement of reasons for appeal, appellant clarifies that he did not intend for BLM to hold the routine courtesy notices but rather other documents such as stipulations in order that BLM could direct its efforts to more pressing matters. He argues that he is overburdened by the paperwork involved in the number of leases he holds and did not know that the rentals were due on December 1. He suggests that if he had known that the rentals were due before he had left, he would have paid them. He contends that he paid the rentals as soon as he actually found out that they were due.

[1] Failure to pay the annual rental for an oil and gas lease on or before the anniversary date of the lease results in the automatic termination of the lease by operation of law. 30 U.S.C. § 188(b) (1976). The Secretary of the Interior may reinstate oil and gas leases which have terminated for failure to pay rental timely only where the rental is paid within 20 days and upon proof that such failure was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1976). In the absence of such proof, a petition for reinstatement is properly denied. See, e.g., Arnold L. Gilberg, 57 IBLA 46 (1981); Alice M. Conte, 46 IBLA 312 (1980); J. R. Oil Corp., 36 IBLA 81 (1978); Lone Star Producing Co., 28 IBLA 132 (1976).

[2] The showing of reasonable diligence necessary for reinstatement ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. 43 CFR 3108.2-1(c)(2). Appellant's rental was due on December 1, 1981. Payment postmarked December 4, 1981, clearly does not meet

the regulatory standard for a showing of reasonable diligence. Ruth Eloise Brown, 30 IBLA 328 (1981); Russell D. Brown, 56 IBLA 345 (1981); Dorothy C. Axelson, 52 IBLA 146 (1981).

[3] Untimely payment of the annual rental may be justifiable for purposes of reinstatement if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Harold W. Fullerton, 46 IBLA 116 (1980); Hubert W. Scudder, 35 IBLA 58 (1978); Albert R. Fairfield, 34 IBLA 132 (1978); Lloyd M. Patterson, 34 IBLA 68 (1978).

This Board has held on numerous occasions that a business or pleasure trip does not constitute a circumstance ordinarily beyond an individual's control and does not ordinarily prevent a diligent individual from making payment or arranging for others to make payment in his or her absence. Arnold Gilberg, *supra*; Michael Morrisroe, Jr., 56 IBLA 49 (1981); Melvin D. Guttman, 51 IBLA 53 (1980); Lloyd M. Patterson, *supra*. Appellant's only explanation for not arranging timely payment is that he did not know that the payments were due. Initially, we note that all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947), 44 U.S.C. §§ 1507, 1510 (1976). Further, we are incredulous that an appellant who professes to hold some 500 leases is not aware that the rentals are due annually on the anniversary date, with the consequence of nonpayment or untimely payment being automatic termination of the lease. Neither appellant's seeming difficulty in keeping track of his leases nor his reliance on the courtesy notices of rental due justifies or excuses his untimely payment. "The conduct of government business cannot be compelled to wait the pleasure or convenience of those persons who seek to deal with it." Dawson v. Andrus, 612 F.2d 1280 (10th Cir. 1980), quoting Jack Koegel, 30 IBLA 143, 144 (1977) (failure to pay first year's rental within 15 days). See also Robert D. Nininger, 16 IBLA 200 (1974) *aff'd* Nininger v. Morton, Civ. No. 74-1246 (D.D.C. Mar. 25, 1975). BLM properly denied appellant's petition for reinstatement.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Wyoming State Office is affirmed.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Bernard V. Parrette  
Chief Administrative Judge

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Edward W. Stuebing  
Administrative Judge

